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8 **UNITED STATES BANKRUPTCY COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 **In re** ) **Case Nos. 03-03470-A11 through**  
12 ) **03-03535-A11**

12 **LEAP WIRELESS INTERNATIONAL**  
13 **INC., and CRICKET COMMUNICATIONS,) (Jointly Administered)**  
14 **INC., et al.,** )

14 **Debtors.** )

**Adv. Proc. No. 04-90381**

15 **Fed. Tax Id. Nos. 33-0811062 and**  
16 **33-79924** )

**MEMORANDUM DECISION**

16 **CRICKET COMMUNICATIONS, INC., a** )  
17 **Delaware corporation,** )

18 **Plaintiff,** )

19 **v.** )

20 **OFFICE OF STATE ASSESSED )**  
21 **PROPERTIES, a public entity within the )**  
22 **State of Tennessee, BARRY M. MURPHY, )**  
23 **Director of State Assessed Properties, )**  
24 **ANDERSON COUNTY, a public entity )**  
25 **within the State of Tennessee, PATSY )**  
26 **STAIR-LOMELL, Trustee for Anderson )**  
27 **County, BLOUNT COUNTY, a public entity )**  
28 **within the State of Tennessee, SCOTT )**  
**GRAVES, Trustee for Blount County, CITY )**  
**OF KNOX, a public entity with the State of )**  
**Tennessee, DAISY W MADISON, Treasurer )**  
**for the City of Knox, CHEATHAM )**  
**COUNTY, a public entity within the State of )**  
**Tennessee, DOT JONES, Trustee for )**  
**Cheatham County, HAMILTON COUNTY, )**  
**a public entity within the State of Tennessee, )**

**CARL E. LEVI, Trustee for Hamilton** )  
**County, KNOX COUNTY, a public entity** )  
**within the State of Tennessee, MIKE LOWE,** )  
**Trustee for Knox County, CITY OF** )  
**KNOXVILLE, a public entity within the** )  
**State of Tennessee, CHRIS KINNEY, Senior** )  
**Director of the Department of Finance and** )  
**Accountability for the City of Knoxville,** )  
**CITY OF MARYVILLE, a public entity** )  
**within the State of Tennessee, DEBORAH P.** )  
**CAUGHRON, Recorder for the City of** )  
**Maryville, MAURY COUNTY, a public** )  
**entity within the State of Tennessee, STEVE** )  
**KONZ, Trustee for Maury County, CITY** )  
**OF MEMPHIS, public entity the State of** )  
**Tennessee, MARIE KIRK OWENS, City** )  
**Treasurer for the City of Memphis,** )  
**NASHVILLE AND DAVIDSON COUNTY,** )  
**a public entity within the State of Tennessee,** )  
**CHARLIE CALDWELL, Metropolitan** )  
**Trustee for Nashville and Davidson County,** )  
**ROBERTSON COUNTY, a public entity** )  
**within the State of Tennessee, SANDRA F.** )  
**HEAD, Trustee for Robertson County, )**  
**SEVIER COUNTY, a public entity within** )  
**the State of Tennessee, JETTIE B. CLABO,** )  
**Trustee for Sevier County, SHELBY** )  
**COUNTY, a public entity within the State** )  
**of Tennessee, BOB PATTERSON, Trustee** )  
**for Shelby County, SUMNER COUNTY, a** )  
**public entity within the State of Tennessee,** )  
**BETTY M. GREGORY, Trustee for Sumner** )  
**County, WILSON COUNTY, a public )**  
**entity within the State of Tennessee,** )  
**ERNEST LASATER, Trustee for Wilson** )  
**County and DOES 1 through 20, inclusive,** )  
**Defendants.** )

## I.

### INTRODUCTION

Cricket Communications, Inc. (“Debtor”) moves for summary judgment on its claim for declaratory relief against defendants the City of Knoxville and Chris Kinney, Senior Director of the Department of Finance and Accountability for the City of Knoxville (collectively “Knoxville”). Debtor seeks a declaration that Knoxville’s claim for 2003 utility taxes (“2003 Tax Claim”) is not an administrative claim; that Debtor’s

1 liability for the late-filed 2003 Tax Claim was barred and discharged; and that Knoxville's  
2 statutory lien securing its 2003 Tax Claim was permanently expunged ("Motion").

3 The Motion is primarily premised upon the doctrine of res judicata. Specifically,  
4 Debtor contends that because Knoxville failed to object to the terms of the plan of  
5 reorganization ("Plan"), or to seek relief from either the Claims Bar Date Order or the  
6 Confirmation Order which are final orders, res judicata bars Knoxville from receiving a  
7 distribution under the Plan on account of its 2003 Tax Claim. Further, Knoxville is  
8 permanently barred and enjoined from collecting its 2003 Tax Claim as a personal liability  
9 of the Debtor or enforcing its lien against any of the Debtor's property.

10 Knoxville disputes Debtor's arguments, asserting that it was denied due process  
11 in the expungement of its lien, and that its 2003 Tax Claim either relates back as an  
12 amendment to its prior-filed proof of claim for 2002 utility taxes ("2002 Tax Claim") or  
13 it is an administrative claim.

14 The Court granted summary judgment in part and denied it in part. The Court  
15 ruled that Knoxville's 2003 Tax Claim is not an administrative claim, but that this claim  
16 might relate back as an amendment to Knox's prior-filed 2002 Tax Claim *if* the 2002 Tax  
17 Claim is deemed to have been timely-filed. *See In re Grivas*, 123 B.R. 876, 878-9  
18 (Bankr. S.D. Cal. 1991). However, the Court did not rule on the timeliness of the 2002  
19 Tax Claim because this issue is not part of this Motion or this adversary proceeding.<sup>1</sup>

20 Further, the Court ruled that Knoxville's lien securing its 2003 Tax Claim was not  
21 expunged, and Knoxville can enforce its lien against the Debtor's property  
22 post-confirmation notwithstanding the language in the final Bar Date Order and the Plan  
23 Confirmation Order because Knoxville was denied due process in the expungement of its  
24 lien.

25 At the hearing, the parties requested clarification as to whether Knoxville's 2003

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27 <sup>1</sup> See Transcript of July 28, 2005 hearing at 3:9-25 through 4:1-23, Docket # 124 (wherein the  
28 parties clarify the timeliness of the 2002 Tax Claim is not part of this Motion or this adversary proceeding.  
Instead, it is being litigated as part of Debtor's objections to Knoxville's 2002 Tax Claim).

1 Tax Claim will relate back as both a “priority and secured” claim entitled to both  
2 treatments under the Debtor’s Plan. Having understood that Knoxville was asserting only  
3 a “priority” claim under the Plan, and not having been unable to review the proofs of  
4 claims in preparation for the Motion, the Court took this issue under submission.<sup>2</sup>

5 **II.**  
6 **FACTS**

7 Debtor is one of sixty-six jointly-administered related entities that filed voluntary  
8 chapter 11 bankruptcy petitions on April 13, 2003 (collectively “Debtors”). As part of  
9 their package of Emergency First Day Motions, Debtors sought and obtained a Claims  
10 Bar Date Order setting a deadline of July 28, 2003 for governmental agencies to file their  
11 proofs of claims. The Claims Bar Date Order, and the Notice of Deadline for Filing  
12 Proofs of Claims specified that all persons and entities, whether secured or unsecured,  
13 must file proofs of claims by the Bar Date Deadline or they would be forever barred from  
14 voting upon or receiving any distribution in any of the Debtors’ cases. [Docket # 31 and  
15 229]<sup>3</sup>

16 ///

17 After the passage of the governmental claims bar date, on August 11, 2003,  
18 Knoxville filed proof of claim No. 1873. This claim asserts a \$127,801.33 “priority”  
19 unsecured utility tax claim for the 2002 tax year. [Docket #122 at Exh. 4]

20 By order entered October 22, 2003, Debtors confirmed their Fifth Amended Joint  
21 Plan of Reorganization. The Plan incorporates the terms of the Claims Bar Date Order.

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22  
23 <sup>2</sup> Debtor utilized Poorman-Douglas Corp. as its claims processing agent throughout this case.  
24 Therefore, all proofs of claims are supposed to be filed with Poorman-Douglas for processing, and the  
25 Court does not image or maintain copies of these claims. To assist the Court’s ruling on the Motion,  
Debtor has since filed the proofs of claims as Docket # 122.

26 <sup>3</sup> Additionally, the Claims Bar Date Order provided that any creditor who fails to timely file a proof  
27 of claim by the Bar Date Deadline shall be forever barred, estopped and enjoined from asserting such claim  
28 against the Debtors, and the Debtors and their property shall be forever discharged from any and all liability  
or indebtedness with respect to such claim. However, it is undisputed that the Claims Bar Date Order was  
*not* served on Knoxville, and this language was *not* in the Bar Date Notice mailed to creditors.

1 The “discharge” provision includes the same language as the Claims Bar Date Order  
2 forever barring and permanently enjoining all persons from asserting any claims or liens  
3 against the Reorganized Debtors, or their properties. [Plan at ¶ 5.09] Due to conditions  
4 precedent to the effective date which are not relevant to this dispute, the Plan’s effective  
5 date did not occur until August 16, 2004.

6 On August 14, 2004, Debtor commenced this adversary proceeding against  
7 Knoxville and numerous other taxing authorities within the State of Tennessee for a  
8 judicial declaration that their late and/or unfiled utility tax claims are discharged and their  
9 statutory liens expunged. On April 7, 2005, Knoxville filed its answer to the complaint  
10 and counterclaim (“Counterclaim”). The Counterclaim asserts that, in addition to the  
11 “secured” 2002 Tax Claim, Debtor also owes “secured” utility taxes for the 2003 and  
12 2004 tax years. [Counterclaim at ¶¶ 2-3 and attachment 1 (itemizing the indebtedness for  
13 each tax year)]

14 Consistent with its Counterclaim, on April 6, 2005, Knoxville filed proof of claim  
15 No. 14 asserting a “secured” claim of \$126,166.33 for its 2002 utility taxes. This proof  
16 of claim specifies that it replaces and amends Knoxville’s previously-filed 2002 Tax  
17 Claim dated August 11, 2003. [Docket #122 at Exh. 5] Further, on July 8, 2005,  
18 Knoxville filed proof of claim No. 15 asserting a “secured” claim of \$101,143.43 for its  
19 2003 utility taxes. [*Id.* at Exh. 6]

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### 24 25 **III.**

### 26 **ISSUE**

27 Whether Knoxville’s late-filed 2003 Tax Claim relates back as an amendment to  
28 its previously-filed proof of claim as both a “priority and secured” claim such that it is

entitled to both treatments under the Plan.

#### IV. LEGAL ANALYSIS

The general rule is that amendments to claims are freely allowed for curing defects in the original proof of claim, providing greater detail to a previously-filed proof of claim, or pleading new theories on previously filed facts. Fed. R. Bank. P. 7015; *Grivas*, 123 B.R. at 878. Untimely amendments which present an entirely new claim will not be allowed. *Grivas* at 878; *Matter of Alliance Operating Corp.*, 60 F.3d 1174, 1175 (5<sup>th</sup> Cir. 1995).

There are benchmarks in a case after which the filing of an amended claim will be more carefully scrutinized. *Grivas* at 878; *Alliance Operating Corp.* at 1175. The initial benchmark is the passing of the claims bar date. *Grivas* at 878; *Alliance Operating Corp.*, 60 F.3d at 1175. Another benchmark is the passing of the plan confirmation date. *Alliance Operating Corp.* at 1175; *Hollstein v. Brill*, 987 F.2d 1268, 1270 (7<sup>th</sup> Cir. 1993). The reason for greater scrutiny after the passing of these benchmarks is to assure that creditors who did not timely assert their claims do not unfairly or inappropriately dilute the distribution available for unsecured creditors. *Alliance Operating Corp.* at 1175-76.

The key factors behind allowing an untimely amendment are the foreseeability of the amendment, *i.e.*, whether the original proof of claim gave notice of the existence, nature and amount of the amended claim; and whether from the perspective of unsecured creditors, the amended claim will result in a reclassification that may affect their distribution under the plan. *Id.* at 1176.

In reviewing these factors, the Fifth Circuit in *Alliance Operating Corp.* affirmed the bankruptcy court's disallowance of an untimely amendment filed post-confirmation. The circuit reasoned that the amendment was not foreseeable because the bankruptcy court did not have notice of the priority nature of the claim from the original unsecured

1 proof of claim even if it was widely known that this type of claim (worker's  
2 compensation insurance premiums) is generally afforded priority status. *Id.* Further, it  
3 reasoned that the amount of the amended claim was significant, and the reclassification  
4 was not "minor" in an absolute sense when viewed from the perspective of unsecured  
5 creditors whose claims could be affected by a change in the distributions under the plan.  
6 *Id.* at 1177. Accordingly, the circuit concluded that under the circumstances, the  
7 amendment was properly disallowed as presenting an entirely new claim. *Id.*

8 In this case, the Court has not yet ruled on whether Knoxville's late-filed 2002 Tax  
9 Claim is to be deemed a timely-filed proof of claim. This issue is not part of this  
10 Motion; nor is it within the scope of this adversary proceeding. Having yet to rule upon  
11 the timeliness of the 2002 Tax Claim, resolution of relationship back issue is academic.

12 **V.**

13 **CONCLUSION**

14 The Court declines to summarily adjudicate the issue of whether Knoxville's 2003  
15 Tax Claim relates back as an amendment to its previously-filed 2002 Tax Claim.  
16 Knoxville filed its 2002 Tax Claim after the governmental claims bar date so it is  
17 untimely. Unless and until the 2002 Tax Claim is deemed timely, the final orders in this  
18 case provide that Knoxville has no claim eligible to receive a distribution under

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1 the Plan. Therefore, the relationship back issue is academic at this time.  
2 Notwithstanding, Knoxville's statutory lien survived bankruptcy and it can enforce its lien  
3 against the Debtor's property post-confirmation. Knoxville is directed to prepare and  
4 lodge an order within ten days of entry of this Memorandum Decision.

5  
6 Dated: \_\_\_\_\_

\_\_\_\_\_  
LOUISE DE CARL ADLER, Judge



1 CAD 168  
2 [Revised July 1985]

3 UNITED STATES BANKRUPTCY COURT  
4 SOUTHERN DISTRICT OF CALIFORNIA

5 Case Nos. 03-03470-A11 through 03-03535-A11  
6 Adv. Proc. No. 04-90381  
7 Case Name: In Re: LEAP WIRELESS INTERNATIONAL etc., et al.

8  
9 CERTIFICATE OF MAILING

10 The undersigned, a regularly appointed and qualified clerk in the Office of the  
11 United States Bankruptcy Court for the Southern District of California, at San Diego,  
12 hereby certifies that a true copy of the attached document, to-wit:

13 MEMORANDUM DECISION  
14 [Re: KNOXVILLE ETC.]

15 was enclosed in a stamped and sealed envelope and mailed to the following parties at  
16 their respective addresses listed below:

17  
18 *PLEASE SEE ATTACHED SERVICE LIST*

19  
20 The envelope(s) containing the above document was deposited in a regular  
21 United States mail box in the City of San Diego in said district on August 19, 2005.

22  
23  
24 \_\_\_\_\_, Deputy  
25 Clerk  
26 CAD 168  
27 Roma London  
28

1  
2 **SERVICE LIST**

3 Leap Wireless International, etc., et al.  
4 Case Nos. 03-03470-A11 through 03-03535-A11  
5 Adversary Proceeding No. 04-90381  
[Re: City of Knoxville etc.]

6 Counsel for Reorganized Debtors

7 Robert A. Klyman, Esq.

8 LATHAM & WATKINS LLP

633 West Fifth Street Suite 4000

Los Angeles, CA 90071-2007

9 Atty for Knox County and Mike Lowe

Dean B. Farmer, Esq.

10 HODGES DOUGHTY & CARSON PLLC

11 P O Box 869

Knoxville TN 37901-0869

12 Atty for City of Knoxville and Doug Abner

W. Morris Kizer, Esq.

13 City of Knoxville

14 P O Box 1631

Knoxville TN 37901

15 Atty for City of Knoxville, Knox County and Hamilton County; Chris Kinney

Dennis Wickham, Esq.

16 SELTZER CAPLAN McMAHON VITEK

750 B Street - 2100 Symphony Towers

17 San Diego, CA 92101-8177

18 Atty for Hamilton County and Carl E. Levi

Scott N. Brown, Jr., Esq.

19 SPEARS MOORE REBMAN & WILLIAMS

P O Box 1749

20 Chattanooga TN 37401-1749

21 Atty for City of Chattanooga and Daisy W. Madison

Kenneth O. Fritz, Esq.

22 801 Broad Street Suite 400

Chattanooga, TN 37402-4284

23 Joseph M. Harrison, IV

24 J M HARRISON & ASSOCIATES

1035 C Street Suite 200

25 Floresville, TX 78114-2223

26 Tiffany L. Carroll, Esq.

OFFICE OF THE U S TRUSTEE

27 402 West Broadway Suite 600

San Diego, CA 92101